

**TOWN OF PARMA
ZONING BOARD OF APPEALS
November 17, 2011**

Members Present: Tina Brown
Veronica Robillard
Dean Snyder
Tim Thomas
Jim Zollweg

Members Excused: Stephen Shelley

Others Present: Jack Barton, Jim Roose, Carrie Webster

Public Present: See attached list

Chairperson Robillard called the meeting to Order at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She reported that one regular Board member was absent, with the alternate Board member present. She explained that a quorum of three is required to pass a motion.

TABLED PUBLIC HEARINGS

1. HUGH MURPHY – 413 BURRITT ROAD

Application of Hugh Murphy, owner, for modification of an existing use variance that was granted on August 29, 1980 at 413 Burritt Road. The existing use variance requires that the owner live in one of the apartments on the property and the applicant is requesting to remove that requirement and allow the owners to live off premise. This property is currently zoned Agricultural Conservation (AC).

Chairperson Robillard recalled that this application was tabled at the October ZBOA meeting to allow the applicant time to develop more substantial competent financial evidence that clearly demonstrates he can't realize a reasonable return from the property without selling this property.

Mindy Zoglin, attorney, stated she represented the applicants in presenting this applicant. She introduced Mike Recino, who is the prospective buyer.

Mrs. Zoglin referred to a packet of information that she provided to the ZBOA members, dated November 14, 2011. She provided a brief history of the property and description of this request. She noted there are three structures: (1) a large building with six one-bedroom apartments, each with separate bathrooms and cooking facilities (the “big house”), (2) a smaller standing block building with two one-bedroom apartments with separate bathrooms and cooking facilities (the “standing block” building), and (3) a wood frame building with a 35-45’ two car garage and two bedroom apartment with a separate bathroom and cooking facilities (the “wood frame” building). She noted the wood frame building shares a common wall with the block storage building. She provided an aerial photo showing the property layout. She stated there are currently 8 occupied rental units. Hugh Murphy currently resides in one apartment in the standing block building. She recalled the 1972 variance which was granted subject to conditions. Owner-occupancy was not listed as a condition of the 1972 variance. Another use variance was approved in 1980 with conditions but again the requirement for owner-occupancy was not listed as a condition. Neither the 1972 nor 1980 variances required owner-occupancy. Thereafter, the applicants rented six one-bedroom apartments in the large building, two one-bedroom apartments in the block building (where Mr. Murphy has lived), and one two-bedroom apartment over the two-car garage. For most of the last 40 years, the property owners have managed the apartment units and Mr. Murphy has lived on the property rent free. However, the property management responsibilities have

become burdensome and they wish to sell the property. She noted that the property has been inspected most recently on July 19, 2011 by the fire marshal, who found no violations. Also the buildings' septic system was inspected on September 9 and 10, 2011 and found to be in working order.

Tim Thomas questioned if the Town code required owner occupied premises. Jack Barton replied that this is not a requirement but was part of the application in 1980.

The Board agreed that this should be looked at as a modification of a use variance. Dean Snyder noted that this is a unique property and something that won't come up over and over again. Chairperson Robillard described her concern about the owner occupancy portion of the original variance. Dean Snyder stated that the owner has shown that there wasn't an opportunity to sell it in the same manner as before. Chairperson Robillard questioned how much effort was made to sell this property. She felt she couldn't easily dismiss the original conditions. She felt the buyer isn't interested in keeping with this condition. She recalled we are looking at 9 rental units. Dean Snyder stated that if the applicants sell this property under the same conditions as the original variance, this would be reflected in the purchase price. An owner-occupied property will not get as much. Chairperson Robillard noted that we have not seen that the property has been on the market for a long time. No evidence has been presented that it could not be sold as an owner-occupied property. Tim Thomas noted that the conditions of the owner occupied property was continued to assure the property was kept up. The new property maintenance code would address any property maintenance issues.

Chairperson Robillard referred to the purchase offer which lists 10 unit apartment buildings. Mrs. Zoghlin stated that the applicant could clarify this. The applicants explained that 9 apartments and 1 storage building is what is being agreed on. Dean Snyder stated that the financial data that was presented substantiates a modification to the variance that does not require an owner-occupied property but we have to try to protect this property by deciding whether the owner should or should not be there. Mrs. Zoghlin provided pictures of the other properties that the prospective buyer owns, all of which were in excellent condition.

Public Comment:

Arda Davey – 146 Burritt Road: Stated she never knew there were that many apartments on this property. It is well maintained. She stated she would not sell this property if she owned it.

The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Hugh Murphy, owner, for modification of an existing use variance that was granted on August 29, 1980 at 413 Burritt Road and to remove the requirement that the owner live in one of the apartments on the property. The property is currently zoned Agricultural Conservation (AC). In addition, the number of apartments will be increased to 9 from 8. In making this determination to approve, I believe the applicant has shown that they are not able to realize a reasonable return, substantiated by competent financial evidence and all the criteria required for a use variance, presented by their attorney as follows:

- **There is no reasonable return from permitted use:** The property cannot yield a reasonable return if the zoning ordinance requires that the owner occupy the premises. The applicants are no longer able to maintain the property due to their age and health conditions and have agreed to sell the property for \$180,000. The buyers have

conditioned the sale upon proof that they may legally operate nine apartment units at the property without being required to reside there.

With approval of this use variance, after the proposed sale, the property's income and expenses are expected to be as follows. The income and expenses are based on Mr. Cooke's 2010 Schedule "E", a copy of which is attached hereto as Exhibit "D." Since Messrs. Cooke and Murphy each own a one half interest in 413 Burritt Road, the income and expenses reported in Schedule "E" represent one half of the total income and expense for the property.

Income:

\$41,148	Rent from 6-unit house and 2 bedroom apartment
<u>5,100</u>	Rent from Mr. Murphy for second 1-bedroom apartment in the standing block building
\$46,248	Total annual income if variance is granted

Expenses:

\$17,076	Mortgage principal and interest
4,074	Cleaning and maintenance
2,874	Insurance
1,500	Legal
4,646	Repairs
9,668	Taxes
<u>5,176</u>	Utilities
\$45,014	

Net Operating profit if variance is granted

\$46,248	Annual income
<u>-45,014</u>	Annual expenses
\$ 1,234	operating profit

If the variance is denied, the purchasers will lose \$5100/year of rental income, resulting in a net operating loss of \$3866 (\$1234 net operating profit - \$5100 lost rental income = \$3866 net operating loss).

The purchasers are not overpaying for the property. In fact, the property is assessed for \$292,400. A copy of the Monroe County property data sheet for this property was provided and labeled Exhibit "F".

Moreover, without the use variance, the applicants will lose the current purchase offer of \$180,000 and may be forced to hire others to manage the property at additional expense. Denying this application for a use variance will result in an undue hardship on the applicants without added benefit to the community because the apartments will continue to be rented in compliance with the 1972 and 1980 use variances after the sale.

Therefore, if the use variance is not granted, the applicant will be unable to yield a reasonable return.

- **Unique Circumstances:** The applicant's inability to realize a reasonable return from any use permitted by the Town's zoning ordinance is caused by circumstances that are unique to this property. The house on the property has been used for six separate apartments since 1972. The block garage apartment building was used for a two-bedroom apartment

after 1980. Owner-occupancy is not economically feasible at this property because the applicants can no longer maintain the property and the purchase offer is conditioned on the ability to operate nine apartment units without the owner-occupancy requirement.

- **The hardship is not self-created:** At the time they acquired the property, the applicants were able to yield a reasonable return. They can no longer do so because they are unable to maintain the property or tend to the needs of the tenants. These circumstances are beyond the control of the applicants and there is no indication that any action on their part caused or contributed to the hardship.
- **The requested use variance will not alter the essential character of the neighborhood:** The requested use variance will not affect the character of the neighborhood. The adjacent property to the west of the property is zoned commercial and houses a doctor's office. The parcel across the street at 426 Burritt Road is zoned rural residential and houses a four-unit structure (a variance for which was granted in the 1960's). Further, seven of the sixteen properties within five hundred feet of the property are not owner occupied. Refer to Exhibit "G".

The presence of other commercial uses in the vicinity of the property in question demonstrates that the proposed use would not alter the essential character of the neighborhood. (refer to *Hanna v. Crossley*, 40 A.D., 2d 577, 578 (4th Dept. 1972).

Moreover, the proposed use is identical to the current use. The proposed use will not adversely affect physical or environmental conditions, be detrimental to the health, safety and welfare of the neighborhood, and will not result in an increase in congestion, traffic or population in the neighborhood.

The applicants seek only to use each of the existing apartment units in the same manner they have been used since their construction. The only difference is that the owner will not reside in one of those units.

With approval of this variance, the property will maintain its appearance and long-standing use, and it will be permitted to yield a reasonable return.

Seconded by Tina Brown. **Motion carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Stephen Shelley).

PUBLIC HEARINGS

2. ANTHONY CAPUANO – 120 DEAN ROAD

Application of Anthony Capuano, owner, for an area variance at 120 Dean Road. The applicant is proposing to construct a 21 feet wide by 32 feet deep attached garage with a side setback of 8 feet from the southerly property line. The applicant is requesting relief from Town Zoning schedule 1 which requires a ten feet side setback. This property is currently zoned Rural Residential (RR).

Anthony explained that he is looking to add this garage with a double garage door. He noted he has a building permit for the current construction of putting an addition onto the back of his house, which is separate from this request. He explained that the existing garage is functional but he needs a larger garage with a double door and could not locate the garage where he wanted it and still comply with the 10 feet required setback. This placement is preferred because he will be able to drive straight into this new garage using his existing driveway.

Public Comment: None.

The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Anthony Capuano, owner, for an area variance at 120 Dean Road to construct a 21 feet wide by 32 feet deep attached garage with a side setback of 8 feet from the southerly property line. This grants relief from Town Zoning schedule 1 which requires a ten feet side setback. This property is currently zoned Rural Residential (RR). In making the determination to approve:

- The benefit cannot be achieved by other means feasible to the applicant. One of the benefits is that the applicant will be able to drive straight into the garage with this placement.
- There will be no undesirable change in the neighborhood character or to nearby properties.
- The request is substantial. A 10 feet side setback is required, but I believe this is mitigated because this is the best location for the new garage.
- There will be no adverse physical or environmental effects.
- The difficulty is self-created but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Stephen Shelley).

3. STEVEN APRILANO – 304 BURRITT ROAD

Application of Steven Aprilano, owner, for area variances at 304 Burritt Road. The applicant is proposing to construct a 40 feet by 60 feet accessory storage building with a wall height of 14 feet. The total area of accessory storage with the existing shed will be 2,640 square feet. The applicant is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height and Article 5, subsection 165-32.C.2 which states in part that the total area of accessory structures shall not exceed 1,500 square feet. This property is currently zoned Rural Residential (RR).

Steven stated he has 5.2 acres and wants to construct an accessory storage building with 14 feet high side walls to accommodate 2 12-feet high overhead doors. He stated this is needed to accommodate his 5th wheel camper. He referred to his drawing of items to be placed in the building, which included: a 21 feet open bow boat, 4 place snowmobile trailer, utility vehicle and 4 snowmobiles, a flat deck trailer, a pick up truck and the 5th wheel camper. He stated that all the items stored in the accessory building are for personal use. He explained he currently uses a gravel driveway and stone area for these items which are now stored outside. He also pays for storage for 3 or 4 of the items listed, which he will no longer have to pay. He stated he planted 29 trees two years ago which will block the view from the neighbors to the west. He stated he has saved materials from his work for a couple of years to build this storage structure. He stated that the building will esthetically match the colors of his house. He noted that both neighbors to the north have pole barns and other neighbors on the street have pole barns. This building will be 500 feet off the road. His house is 315 feet off the road. His lot is 640 feet deep. He noted that the square foot of the accessory building will be less than the square footage of the house, which is 3184 square feet.

Public Comment:

Jim Allardice – 301 Burritt Road: Stated he lives across the street and has no objections to this application. He noted the owner keeps the property well maintained.

The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Dean Snyder noted that the sketch provided by the applicant is not drawn to scale. The items are actually about 70% larger than appear in the drawing.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Steven Aprilano, owner, for area variances at 304 Burritt Road to construct a 40 feet by 60 feet accessory storage building with a wall height of 14 feet. The total area of accessory storage with the existing shed will be 2,640 square feet. This grants relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height and Article 5, subsection 165-32.C.2 which states in part that the total area of accessory structures shall not exceed 1,500 square feet. This property is currently zoned Rural Residential (RR). In making the determination to approve both the square footage and wall height:

- The benefit cannot be achieved by other means feasible to the applicant. I believe that the applicant has done a solid job of determining the need for space and considered the need to move around the items. The 14 feet high walls are needed to accommodate 2 12-feet high overhead doors to store the 5th wheel camper without the risk of damage to the camper. The square footage is approved because putting items inside will provide a safe area from vandalism and weather.
- There will be no undesirable change in neighborhood character or to nearby properties. This building will be 500 feet from the road. The applicant has planted trees to create a buffer to the neighbors to the west. Other structures on Burritt Road are similar to the one proposed.
- The request is substantial, for both the wall height and square footage. However, the applicant has done a commendable job of justifying the 14 feet wall height and square footage.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Seconded by Tina Brown. **Motion carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Stephen Shelley).

4. JAMIE THULIN – 64 BURRITT ROAD

Application of Jamie Thulin, owner, for an area variance at 64 Burritt Road. The applicant is proposing to construct a 30 feet by 40 feet accessory storage building in the front yard and is requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR).

Jamie explained he wants to put a barn in his front yard which he considers his side yard. He has a small turnaround off his driveway to use for access to this storage building. He stated that wet areas in his back yard and location of the septic system prevents placement in the back yard. He described evergreen trees on the west which leaves no room for a building. He stated that there would be 20 feet from the lot line to the back of the building. He described his property as 2400 feet deep and 600 feet wide. He stated that the storage building will be at least 650 feet off the front property line. He noted he has 29.8 acres. He explained that placement of the building further back would require removal of 12 apple trees, which are the only trees that are productive on this property. He stated he has additional land to the east and north of this property. He stated that the materials used for the storage building will match the house.

Public Comment:

Steve Aprilano – 304 Burritt Road: Stated he knows this property and understands the need to put a building in the location that is requested. It will be far off from the road. He stated he has no objections.

Arda Davey – 146 Burritt Road: Asked why he didn't consider this when he was building the home. Jamie responded he stated he didn't know he couldn't put the accessory building in the side yard. Chairperson Robillard explained that variances are granted on a case-by-case basis and decisions based on a lot of factors.

The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Jim Zollweg to approve the application of Jamie Thulin, owner, for an area variance at 64 Burritt Road to construct a 30 feet by 40 feet accessory storage building in the front yard and this grants relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR). In making the determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant. Given the limited possible locations on this property for this storage building, the septic system location, the 12 apple trees, drainage, and location of the current driveway to access this building, I believe this is the best location.
- There will be no undesirable change in neighborhood character or to nearby properties. This structure would be in line with other properties in the neighborhood. It will be 650 feet away from Burritt Road. Because of the relative distance between the road and the structure, it would not be perceived as being out of place. In addition, the applicant owns additional land to the east and north of this property.
- The request is substantial. The code states all accessory storage buildings are to be located in the rear yard.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created, however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dean Snyder. **Motion carried (4-1)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Jim Zollweg; Nayes: Tim Thomas; Absent: Stephen Shelley).

MINUTES OF OCTOBER 20, 2011

The ZBOA minutes of October 20, 2011 were reviewed and the following recommended changes were made: Page 1, Hugh Murphy application: change all reference to "Hugh Murphy to Dan Cooke" and vice versa. Following discussion, a **Motion** was made by Dean Snyder to approve the October 20, 2011 minutes with the recommended changes. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Jim Zollweg; Abstain: Tim Thomas; Absent: Stephen Shelley).

OTHER BUSINESS

2012 Zoning Board Meeting Dates: The Board reviewed the meeting dates for 2012 and reported minimal conflicts. The dates were approved as submitted.

New Code Books: Updated zoning code books were distributed to the Board members. Jack asked everyone to turn in their old code books.

Frank Lucisano Passing: The Zoning Board members took a moment to show their respect for Frank Lucisano, who recently passed away, and expressed their gratitude for his many years of service on the zoning board.

Robert and Lauri Triassi - 61 Dean Road: Jack recalled the area variance granted to the Triassi's in August of 2011 to keep five chickens on their property. He noted that one of the conditions in this variance was that the chicken coop be relocated to no closer than 170 feet from back of the house so that it will create a minimum impact on neighbors to reduce noise, rodent activity or any other negative impact. To date, this chicken coop has not been moved and Jack reported that a neighbor has complained. Jack noted that the Motion did not indicate a timeframe for the coop to be moved and questioned the Board what their intention was for a timeframe for this to occur. Following Board discussion, it was reported that the intent was to move the coop within 60 days, but this was not included in the Motion. Chairperson Robillard polled the Board and the Board concurred with this recommendation. Jack Barton stated he would send a letter to the applicant informing them of the 60 day requirement from the date of this meeting.

Bonnie Thomas - 8 Clearview Avenue: Jack reported that Bonnie called him expressing her opinion that her attorney did not present her case accurately at the September hearing, and that she based her purchase of this property on information provided by the Town of Parma, Monroe County and the Title insurance records. Following discussion, it was the Board's opinion that based on the evidence presented on her application, along with the testimony of her attorney and her realtor, that they made the correct decision. The Board members expressed their regret at her situation, but explained that they are bound by the laws of the State that apply to use variances. It was stated that the options available to the applicant are to request a rehearing, if significant new information is available for review by the Board, but the opportunity to appeal the Board's decision at the Supreme Court level has expired

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Jim Zollweg, to adjourn the meeting at 9:35 p.m. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Stephen Shelley).

Respectfully submitted,

Diane Cook, Recording Secretary